

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

GEM YIELD BAHAMAS LIMITED and GEM  
GLOBAL YIELD LLC SCS,

Petitioners,

vs.

MULLEN TECHNOLOGIES, INC. and MULLEN  
AUTOMOTIVE, INC.,

Respondents.

Case No. 1:24-cv-001120-KPF

Related Case No. 1:23-cv-11268-KPF

Hon. Katherine Polk Failla

**DECLARATION OF DAVID MICHERY**

I, David Michery, declare and say, under penalty of perjury, as follows:

1. I respectfully submit this Declaration in connection with the above-captioned matter. My professional address is 1405 Pioneer Street, Brea, California 92821.

2. I am the Chairman of the Board, President and Chief Executive Officer of Respondents Mullen Technologies, Inc. and Mullen Automotive, Inc. (“Mullen Auto” or the “Company”).

3. Based upon my personal experience and professional responsibilities, I have personal knowledge of the facts set forth in this Declaration. I am over the age of eighteen and am competent to testify as to the statements made herein.

4. I understand that the Court has ordered the Respondents to demonstrate why Mullen Auto has failed to comply with the Court’s orders (the “Orders”) regarding the maintenance by the Company of approximately \$24 million in satisfaction of an interim measures award issued by the arbitrator in an arbitration between the parties hereto, and the Respondents’ intention to rectify that lack of compliance. As demonstrated below, Mullen Auto has not had the ability to satisfy the Orders because it has not had sufficient cash to do so.

5. However, it recently has secured commitments for additional financing that, assuming certain conditions are satisfied and subject to the limitations governing those financing transactions, may provide the Company with sufficient liquidity to satisfy its obligations to the Court under the Orders.

**The Company**

6. Mullen Auto is a NASDAQ-listed, development-stage EV manufacturer that only relatively recently has commenced operations and started to generate revenue. As of the market close on July 2, 2024, the Company's market capitalization totaled a little over \$38 million.

7. Developing and manufacturing electric vehicles is a capital-intensive business. Mullen Auto's principal source of liquidity to keep its business operations going consists of existing cash and restricted cash.

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED]

[REDACTED]

10. [REDACTED]

[REDACTED]

11. In addition to certain cost-cutting measures it has undertaken in recent months, Mullen Auto has actively pursued throughout 2024 additional funding. It is only recently that the Company has been able to secure commitments for such financing.

**The Note Transaction**

12. For instance, on May 14, 2024, the Company entered into a securities purchase agreement (the “SPA”) with certain investors pursuant to which the investors agreed to purchase an aggregate principal amount of \$52.6 million of senior secured convertible notes and warrants (the “Note Transaction”). (A detailed description of this financing transaction can be found beginning on page 5 of the proxy statement filed by Mullen Auto in connection with that transaction, a true and correct copy of which is attached hereto as Exhibit B.)

13. However, the obligation of the investors to purchase these securities is subject to a number of conditions including, but not limited to, (i) the Company obtaining stockholder approval for the issuance of the notes and warrants, (ii) the Company has sufficient authorized shares of common stock to cover the conversion of the notes and exercise of the warrants, (iii) a registration statement covering those securities has been declared effective by the SEC, and (iv) Mullen Auto’s common stock has an average trading volume of \$3 million in the previous 10 trading days.

14. Upon execution of the SPA, the investors purchased an initial aggregate principal amount of \$12.5 million, which the Company needed at the time to maintain its operations. However, there is no guarantee that the investors will be obligated to purchase the remaining amount (\$37.5 million after applying a negotiated issuance discount) given the aforementioned conditions. Most of these conditions are out of Mullen’s control, and there is no certainty that all of the applicable conditions will be satisfied.

15. The stockholder vote on the Note Transaction currently is scheduled for July 9, 2024.

**The ELOC Transaction**

16. On May 21, 2024, the Company entered into a common stock purchase agreement with an equity line investor pursuant to which the investor agreed to purchase from the Company, at the Company's sole discretion and direction, shares of Mullen Auto common stock having a total maximum aggregate purchase price of \$150 million (the "ELOC Transaction"). (A detailed description of this financing transaction can be found beginning on page 11 of the proxy statement filed by Mullen Auto in connection with that transaction, a true and correct copy of which is attached hereto as Exhibit B.)

17. The ELOC Transaction is subject to certain limitations including a limit on the number of shares that the Company can direct the investor to purchase on any given business day, which, among other things, will impact the amount of proceeds that Mullen Auto will receive on any given day that it directs the investor to purchase shares of its common stock.

18. The stockholder vote on the ELOC Transaction currently is scheduled for July 9, 2024.

19. Given the limitations and conditions applicable to the Note Transaction and the ELOC Transaction, [REDACTED], the Company continues look for additional financing.

**Satisfying The Orders**

20. Mullen Auto takes its obligations to the Court seriously and intends to rectify its lack of compliance. Given its current liquidity situation, and the conditions and limitations governing the Note Transaction and ELOC Transaction, it would appear that [REDACTED]

[REDACTED]

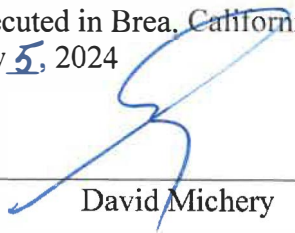
[REDACTED]

21. [REDACTED]

\* \* \*

I hereby affirm that everything I have stated herein is true and correct to the best of my knowledge.

Executed in Brea, California on  
July 5, 2024

  
\_\_\_\_\_  
David Michery